IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 141 OF 1988.

The Commissioner of Income-tax,
Bombay City-V, Bombay. ... Applicant.

V/s.

Shri Navinchandra H. Somaiya ... Respondent.

Shri Parag Vyas for the applicant.

None for the respondent.

CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.

DATED : 27.6.2005.

P.C. :

. By this reference under section 256 (1) of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that even if compensation for acquisition of land in question would have been business income in the hands of the firm, the same received by the assessee as partner after dissolution of the firm, would not come in the category of business income but would be taxable as capital gains under section 176(3A) of the Income-tax Act, 1961?"

. None for the respondent-assessee inspite of service.

2. Learned Counsel appearing for the Revenue submits that the question referred to this Court is covered by the judgment of this Court in the case of Khatau Vallabhdas vs.C.I.T., Bombay reported in 1979 (IT2) -GJX-0125-Bom. =(1979) 119 ITR 846.
Accordingly, he submits that the question should be answered in favour of the Revenue and against the assessee.

3. Having heard learned Counsel appearing for the Revenue and having gone through the material available on record, we find it difficult to accept the submissions made on behalf of the Revenue.In the case of Khatau Vallabhdas (supra), the assessee was a partner in the partnership firm. The partnership was dealing in grocery articles. Those goods were purchased for being sold as stock-in-trade. On dissolution of the partnership firm the stock-in-trade came to be allotted to the share of the assessee which he disposed of. In these circumstances, the question was whether or not the commodities received by the partner on dissolution of the partnership firm were capital asset in the hands of the partners and profit on sale thereof

would constitute capital gains. While determining this question, the Division Bench has mainly given due regard to the nature of the commodities and the object with which the assessee had disposed of the commodities which had came to his share as a result of dissolution of partnership firm. The Division Bench had also given due weightage to the fact that traders do not purchase grocery articles with a view to make investment so as to acquire a capital asset, but they are purchased as stock-in-trade. They are purchased for resale as a part of a scheme of profit-making. In the case of Khatau Vallabhdas (supra) the commodities sold were, admittedly, stock-in-trade of the partnership firm. Since the grocery articles are normally held by a trader as stock-in-trade, it was held to be stock-in-trade in absence of any indication that the assessee had intended to hold his stock as capital. That is why it was held that the sale of the grocery articles were made as a part of trading activity, hence, the income derived therefrom was treated as business income.

4. So far as case on hand is concerned, investment was made in the immovable property for its development. It was not a stock-in-trade. In this view of the matter, we are of the considered view that the income derived by the assessee as a partner; after dissolution of the partnership firm,

arising out of sale of immovable property would be taxable as capital gains under section 176(3) of the Act and not as business income.

5. We concur with the view taken by the Tribunal and accordingly answer the question in the affirmative i.e. favour of assessee and against the Revenue.

. Reference stands disposed of with no order as to costs.

(A.S.AGUIAR, J.) **(V.C.DAGA, J.)**